

Application No. 10/729,486
Amendment dated January 17, 2007
Reply to Office Action of October 24, 2006

REMARKS/ARGUMENTS

Claims 11-28 are presented for Examiner Waggoner's consideration. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

I. Claim Amendments

Newly added claims 25 and 26 capture features recited in independent claims 1 and 7 that were canceled after the restriction election making the subject matter dependent on claim 11. The claims are withdrawn since they incorporate non-elected subject matter pending allowance of the elected subject matter from which they depend. Claims 27 and 28 further define the spring/snap action of the lid as discussed at page 9, lines 20-35 of the specification. No new matter is introduced as support for the new claims appears at the cited location.

II. 35 U.S.C. § 103 Rejections

Claims 11-13 and 19 stand rejected under 35 U.S.C. § 103(a) as obvious in view of USPN 6,431,360 issued to Julius in view of USPN 4,778,071 issued to Fillmore as modified by USPN 6,702,109 issued to Tabuchi. Claims 14-18 stand rejected under 35 U.S.C. § 103(a) as obvious in view of USPN 6,431,360 issued to Julius in view of USPN 4,778,071 issued to Fillmore as modified by USPN 6,702,109 issued to Tabuchi in view of routine experimentation.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

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be found in the prior art and not based on the Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teaching of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP 2142.

A *prima facie* case of obviousness has not been established since the cited references do not suggest the claimed invention, and the Examiner has not presented a convincing line of reasoning as to *why* the artisan would have combined the references as suggested.

First, with regard to the references, Julius is directed to a wet wipe package having a resealable cap assembly 46 that engages with a holder 20 to prevent compressing the flexible material portion of the package by the holder. As noted by the Examiner, Julius does not disclose a living hinge having a central strap and two toggle straps that provides a snap-open / snap-closed action. The resealable cap assembly of Julius opens and closes without a snap-type hinge or any other biasing method. Tabuchi discloses a wet wipes package having a flexible packaging bag 3 with a cover unit 8 that includes an elastic body 14 that causes the cover body 13 (lid) to spring open and remain in an open position when the operating portion 17 (button) is depressed. Fillmore discloses a closure 10 with a snap-type hinge having a skirt 15 with an internal thread 20 for attachment to a bottle. Fillmore fails to disclose or suggest use of a snap-type hinge with a wet wipes package or connecting the closure to a flexible package with a flange affixed to the outer surface of a pouch as claimed. Furthermore, Fillmore teaches that it is an object of his invention to produce a closure that does not rely on tension and elastic elongation of the hinged components to produce the snap action. See column 1, lines 14-15, lines 28-35, and column 2, lines 60-65.

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The Examiner has stated that "It would be obvious to one skilled in the art to modify the dispenser of Julius to have a living hinge which has a central strap and two toggle straps and to have a removable portion surrounded by the flange **because the central strap and toggle strap act to hold the dispenser lid in an open position...**" (Emphasis supplied.) While such a statement describes *what* would happen if such a modification was made, it does not describe a motivation or reason *why* the skilled artisan would make the proposed modification by including a central strap and toggle straps as claimed. If the motivation is **to hold the dispenser lid in an open position** as stated, the skilled artisan could have chosen the elastic biasing member disclosed by Tabuchi to accomplish the desired result since Tabuchi also discloses a flexible wet wipes package having a rigid flip top with a dispensing lid that stays in an open position. The Examiner has not provided a motivation or reason for the skilled artisan to select the snap-open hinge action of Fillmore **to hold the lid open** over the elastic biasing method of Tabuchi. As such, the Examiner has not provided a convincing line of reasoning and has failed to establish a *prima facie* case of obviousness. Furthermore, it appears improper hindsight has been used by the Examiner and that the Applicants' claimed invention was used as a blueprint to find the individual pieces in the prior art, which were then assembled into an obviousness rejection.

Second, with regard to the references themselves, there is no teaching or suggestion in the references individually or combined to produce a wet wipes package having rigid flip top connected to a flange with a spring/snap hinge such that the cover is biased into either a closed or an open position. Julius, Fillmore, or Tabuchi individually or combined fail to teach or suggest using a spring/snap hinge on a wet wipes package to assist in opening the lid by holding it in an open position and to assist in closing the lid by holding it in a closed position. The lid in Julius is not biased in any direction and the lid in Tabuchi is only biased in an open position. The lid in Fillmore is not designed for a wet wipes package and is designed only for a bottle having a screw thread top.

Lastly, Fillmore explicitly teaches away from the tension and elastic elongation spring/snap hinge claimed by the Applicants in claims 27 and 28. Regarding claim 27, Fillmore has a straight line of action to the hinge components as shown in Figure 3 whereas the

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Applicants' claim a curved line of action for the hinge components as shown in Figure 5 to enable tensioning of the pair of toggle straps. Regarding claim 28, the Applicants claim the pair of toggle straps under go tension for at least a portion of the lid's opening, which is opposite to the teachings in Fillmore. As such, these claims are not obvious in view of Fillmore combined with Julius and Tabuchi.

III. Conclusion

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at: (920) 721-7760.

Respectfully submitted,

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